IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.4040 of 2007
Date of Decision:27.08.2007

Dayal Chand & another .... Petitioners

versus

Kartar Singh .... Respondent

Before: Hon'ble Mr. Justice R.S. Madan

Present: Mr. R.S. Longia, Advocate
for the petitioners.

R.S. Madan, J

1. This civil revision petition is directed against the order dated 28.07.2007 rendered by learned Rent Controller, Patiala, in a petition u/s 13 of the East Punjab Urban Rent Restriction Act, vide which he dismissed the application for additional evidence filed on behalf of the petitioner/tenant.

2. It is the case of the petitioner that they had engaged Sh. P.C. Jagga, Advocate to conduct their case, who was not maintaining good health and remained admitted in PGI from time to time. Dayal Chand, petitioner tendered his affidavit on 26.05.2006 along with some documents and photostat copy of Partnership deed dated 1.04.1992. At that time the original partnership deed was not traceable, later on the same was found with the Income Tax counsel for the petitioner and was handed over to Sh. P.C. Jagga along with the receipts issued by Kartar Singh after receiving the rent from Dayal Chand-petitioner No.1.

3. The witnesses of the tenant was examined, in the presence of junior counsel of Sh. P.C. Jagga, because he could not attend the Court due to his illness. On account of non-appearance of Sh. Jagga, the junior counsel could not place on the record the original partnership deed despite

of the fact that it was lying in the brief of Sh. Jagga.

4. The plaintiff now sought that he may be allowed to place on the record the original partnership deed as well as the rent receipts in the interest of justice by way of additional evidence.

5. Upon notice, the tenant-respondent opposed the application in terms of written reply filed by them.

6. After hearing the learned counsel for the parties, the trial court dismissed the application on the ground that prior to this the tenant has not been exercising due diligence to produce the relevant record before it. So evidence was closed by the order of this Court when they failed to conclude the same despite of ample opportunities. The tenant preferred a revision against the order declining the prayer for additional evidence as a result, the Hon'ble High Court allowed the tenant one more opportunity to conclude the evidence.

7. The tenant, however, examined RW/1 Rajinder Kumar who was cross-examined on 14.05.2007 and thereafter the tenant suffered a statement and closed their evidence.

8. It is further evident from the file that no witness to the partnership deed was ever summoned. Therefore, there was no occasion for the petitioner to place the partnership deed on the record. The petitioner has not been exercising due diligence throughout the proceedings pending before the Rent Controller, Patiala, but in fact has been adopting all delaying tactics to avoid the ejectment of the premises in question. By resorting to this kind of clever device, the tenant-petitioner cannot be allowed now to prove these documents by way of additional evidence as it would amount to re-opening of the trial.

9. The authority **"Punjab State Civil Supplies Corporation Ltd and others versus M/s Bansal Rice Mills and others, 2004(1) PLR 482,** wherein this Court has granted another opportunity to the petitioner to

examine the witnesses which he could not produce due to shortage of time, is not applicable to the facts of the present case as in the present case, the Court has also allowed the petitioner to produce his entire evidence. But the petitioner except examining Rajinder Kumar, RW/1 failed to examine any of the witnesses of the partnership deed and rent deed.

10. Reliance was also placed on **Jaipur Development Authority, versus Smt. Kailashwati Devi, AIR 1997 Supreme Court 3243.** It is a case where the permission to adduce additional evidence was allowed during appeal on the ground that same cannot be rejected because the party could not adduce any evidence in the trial court. The observation made in this authority is however, not disputed but the same is not attracted to the facts of the present case.

11. In view of my above discussion, no infirmity has been found in the order of the Rent Controller while dismissing the application of additional evidence.

12. Finding no merit, this revision petition is dismissed.

(R.S. Madan)
Judge

27.08.2007
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